

2. That the control and charge of the distribution of the waters of the Provo River System was conferred upon the State Engineer by order of the District Court in and for Salt Lake County, State of Utah; that the District Court in and for Salt Lake County, State of Utah, assumed jurisdiction over the waters of the Provo River System, Utah Lake and the Jordan River pursuant to directions from the Utah State Supreme Court; that by Order dated the 1st day of September, 1944, Honorable C. E. Henderson, Judge of the Third Judicial District Court in and for Salt Lake County ordered, that the case of Salt Lake City, a Municipal Corporation of the State of Utah, et al, Plaintiffs, vs Tamar Anderson, Defendant, Case No. 57298 Civil, "shall hereafter proceed in all particulars in conformity with the provisions of Chapter 4, Title 100, Utah Code Annotated 1943, and the amendments thereto and the Clerk of this Court and the State Engineer of the State of Utah are directed to perform the duties imposed upon them by, and to comply with, the provisions of Chapter 4, Title 100, Utah Code Annotated 1943 and the amendments thereto, to the end that there may be a determination and

adjudication of all of the rights to the use of the waters of Utah Lake in Utah County, Utah and of the Jordan River in Utah and Salt Lake Counties, Utah and their tributaries".

3. That the waters involved in the case of Salt Lake County, et al vs Tamar Anderson et al, Case No. 57298 Civil, embrace the waters described in the Petition of Esthma Tanner; said latter waters being tributary to the Provo River and being included in the aforementioned adjudication suit.

4. That subsequently the State Engineer filed a Petition with the Third Judicial District Court in and for Salt Lake County for an Order directing the State Engineer to appoint Water Commissioners on all tributaries of Utah Lake and Jordan River; that on the 9th day of February, 1945 said Court signed said Order and the State Engineer assumed jurisdiction over the waters of the Provo River.

5. That by virtue of the foregoing Orders the District Court of the Third Judicial District in and for Salt Lake County has assumed complete jurisdiction over all the waters of the Provo River System; that the Fourth Judicial District Court in and for Utah County is without jurisdiction to direct the State Engineer in any matter concerning the distribution of the waters of the Provo River; that the State Engineer has, by virtue of the Order of the District Court, attempted to proceed as an officer of said Court to make a general determination and is acting under the direction and control of said Court; that as an officer of said Court is beyond the jurisdiction and power of the Fourth Judicial District Court in and for Utah County.

6. In answer to paragraph 2 of the Petition defendant admits that the decree was entered in Case No. 2888 Civil as alleged in such Petition and that said decree is now in full force and effect and fixes the rights to the use of water from Provo River as between all the parties to Case No. 2888 Civil; that defendant denies said decree fixes the rights to the use of the water of the Provo River System throughout the State and alleges that there were interested parties who were not made parties to Case No. 2888 Civil; that said parties are too numerous for the defendant to set out in full herein; that they involve all the users of water from Utah Lake, ^{and} Jordan River and its tributaries.

7. Defendant admits that the Petitioner has a drainage system on her lands as alleged by the Petition; that defendant has no knowledge as to whether the total amounts of water accumulated in said drain during the 1945 irrigation season are as alleged in paragraph 3 of said Petition and ^{because of} ~~have~~ lack of information relative thereto, ~~and~~ denies the same.

8. In answer to paragraph 4 of the Petition defendant alleges that he does not have sufficient knowledge upon which to form a belief in regard to the matters alleged therein therefor denies the same.

9. In answer to paragraph 5 of the Petition defendant admits the whole thereof.

10. In answer to paragraph 6 of said Petition the defendant admits the whole thereof.

11. In answer to paragraph 7 the defendant alleges that he has not had adequate time to check the accuracy of the facts alleged therein as to the flow of water in the Provo River System and the demands of the various water users thereon below the point of discharge from Petitioner's drainage system; defendant therefor denies the whole of paragraph 7.

12. In answer to paragraph 8 of the Petition defendant admits that he has limited the Petitioner to 4.25 second feet of water under the terms and provisions of the decree. Defendant denies that he has been arbitrary or that the allowance has been unlawful. Defendant also denies that there should have been distributed to the Petitioner the quantity of water discharged by Petitioner's drainage system into the Provo River System, whatever that amount may be, or in the amount set forth in paragraph 3 of the Petition.

13. In answer to paragraph 9 defendant admits that demand was made on him for the distribution of water to the Petitioner equal to the full amount of water discharged from the drainage system and admits that he has failed and refused, and still refuses, to comply with said demand. The defendant denies that he has either arbitrarily or unlawfully deprived the Petitioner ~~of~~ any water to which she was lawfully entitled.

14. By way of further answer to said Petition the State Engineer alleges that the amount of water discharged from the drainage system of the Petitioner

at the time of the court decree in Case No. 2888 Civil averaged less than 2 second feet and that it was never intended by said decree that the right of the Petitioner should expand proportionately to the increase of water discharging from said drainage system or at all.

15. That the drainage area which supplies the water to the Petitioner's drain has been flooded with new and additional water including the waters from Deer Creek Reservoir and that said waters are ~~repeated~~ ^{reflected} in unknown quantities in the water being discharged from Petitioner's drain; that increased irrigation on the bench lands above Petitioner's drain has increased the flow being discharged from such drain; that poor irrigation practices of neighboring water users has increased the underground water flow and has contributed to and is ~~repeated~~ ^{reflected} in the flow of water in the Petitioner's drain; that all of the waters intercepted by said drain would reach Provo River independently of said drain.

16. That the amount of water being discharged from Petitioner's drain has been gradually increasing since the date of the Court decree, such increases are caused by the various factors set forth in paragraph 15; that ~~any~~ ⁱⁿ additions ^{changes} ~~thereto~~ have been made by the Petitioner in the nature and type of the drain and an additional drain running from east to west ~~has been added~~.

17. That the aforesaid decree, particularly paragraph 31 thereof, requires that the Petitioner discharge said waters into the Provo River; that one of Petitioner's drains discharged its waters into Spring Creek in violation of said decree; that the other drain discharged its water into a sump where it is picked up by a subsequent non-consumptive appropriator; that the burden is on the Petitioner to show continuously that the quantity of water which is being discharged by said drain into the Provo River; that Petitioner has failed to maintain adequate measuring devices ~~to measure~~ ^{the} and ~~continues~~ to measure the quantity of water; that State Engineer has no accurate data to use as a guide in distributing water to the Petitioner in exchange for the drain water.

WHEREFORE the defendant prays that the order to show cause be dismissed.

Shower H. Giles

Edward W. Myers
Sp. Asst. Ad. General

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

Ed. H. Watson, being first duly sworn upon oath deposes and says: that he is the defendant named in the Order to show cause that he has read the foregoing Answer and knows the contents thereof; that the same is true as to his knowledge except as to those matters alleged on information and belief and to those matters he believes them to be true.

Ed. H. Watson

Subscribed and sworn to before me this 25th day of September
1945.

My Commission Expires:
Sept. 17, 1947

K. H. Heston
Notary Public

